

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL BOBOWSKI, ALYSON BURN,
STEVEN COCKAYNE, BRIAN CRAWFORD,
DAN DAZELL, ANGELO DENNINGS,
CHEYENNE FEGAN, SHARON FLOYD,
GREGORY GUERRIER, JOHANNA
KOSKINEN, ELENA MUNOZ-ALAZAZI,
ELAINE POWELL, ROBERT PRIOR, ALIA
TSANG, and KYLE WILLIAMS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

CLEARWIRE CORPORATION,

Defendant.

Case No. C10-1859-JLR

[Proposed] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT,
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS, AND
APPROVING FORM AND
MANNER OF NOTICE

NOTE ON MOTION CALENDAR:
Friday, August 24, 2012

Plaintiffs have filed a Motion for Conditional Certification of Proposed Settlement Class Preliminary Approval of Class Action Settlement, Directing Notice, and Setting Hearing on Final Approval of Settlement ("Motion"). Having reviewed the Motion and supporting materials, the Court determines and orders as follows:

[Proposed] ORDER GRANTING
PRELIMINARY APPROVAL
No. C10-1859 JLR

1 A. Counsel have advised the Court that the parties have agreed, subject to final
2 approval by this Court following notice to the Plaintiff Settlement Class and a hearing, to settle
3 this action, on the terms and conditions set forth in the Settlement Agreement and Release of
4 Claims (the "Agreement").

5 B. The Court has reviewed the Agreement, as well as the files, records, and
6 proceedings to date in this matter. The terms of the Agreement are hereby incorporated as
7 though fully set forth in this Order. Capitalized terms shall have the meanings attributed to them
8 in the Agreement.

9 C. Based upon preliminary examination, it appears to the Court that the Agreement
10 is fair, reasonable, and adequate; that the Plaintiff Settlement Class should be certified for
11 settlement purposes; and that the Court should hold a hearing after notice to the Plaintiff
12 Settlement Class to determine whether to enter a settlement approval order and final judgment in
13 this action, based upon that Agreement.

14 Based upon the foregoing, IT IS HEREBY ORDERED:

15 1. ***Preliminary Approval of Proposed Settlement.*** The Agreement, including all
16 exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. The Court finds that
17 (a) the Agreement resulted from extensive arm's-length negotiations, and (b) the Agreement is
18 sufficient to warrant notice thereof to members of the Plaintiff Settlement Class and the
19 Settlement Hearing described below.

20 2. ***Class Certification for Settlement Purposes Only.*** Pursuant to Fed. R. Civ. P.
21 23(b)(3), the Court, for settlement purposes only, conditionally certifies a class ("Class")
22 consisting of all persons and entities who (i) purchased Clearwire's retail services between
23 November 14, 2004, and February 27, 2012, and (ii) provided Clearwire with a billing address in
24 the United States.

25 (a) In connection with the certification, the Court makes the following preliminary
26 findings:
27

1 (1) The Class satisfies Fed. R. Civ. P. 23(a)(1) because the Class appears to be
2 so numerous that joinder of all members is impracticable;

3 (2) The Class satisfies Fed. R. Civ. P. 23(a)(2) because there appear to be
4 questions of law or fact common to the Class;

5 (3) The Class satisfies Fed. R. Civ. P. 23(a)(3) because the claims of the
6 plaintiffs named in the caption appear to be typical of the claims being resolved through the
7 proposed Settlement;

8 (4) The Class satisfies Fed. R. Civ. P. 23(a)(4) because the named plaintiffs
9 appear to be capable of fairly and adequately protecting the interests of the above-described
10 Class in connection with the proposed Settlement and because counsel representing the Class are
11 qualified, competent and capable of prosecuting this action on behalf of the Class.

12 (5) The Class satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because,
13 for purposes of Settlement approval and administration, common questions of law and fact
14 appear to predominate over questions affecting only individual Class Members and because
15 settlement with the above-described Class appears to be superior to other available methods for
16 the fair and efficient resolution of the claims of the Class. The Class appears to be sufficiently
17 cohesive to warrant settlement by representation.

18 (b) In making the foregoing findings, the Court has exercised its discretion in
19 conditionally certifying a settlement class.

20 (c) Michael Bobowski, Alyson Burn, Steven Cockayne, Brian Crawford, Dan Dazell,
21 Angelo Dennings, Cheyenne Fegan, Sharon Floyd, Gregory Guerrier, Johanna Koskinen, Elena
22 Munoz-Alazazi, Elaine Powell, Alia Tsang, Kyle Williams, Chad Minnick, Linda Stephenson,
23 Stephen Reimers, Donald Schultz, Corey Jelinski, Victoria Bartley, Christopher Cuhel, Karen
24 Grefsrud, Rita Mcvicker, Glenn Reynolds, Eva Girod, and Sharon Newton are hereby designated
25 as Class Representatives.

26 3. **Class Counsel.** The Court appoints (a) The Law Offices of Clifford A. Cantor,
27 P.C.; (b) Milberg LLP; (c) Reese Richman LLP; (d) Tycko & Zavareei LLP; (e) Peterson

1 Wampold Rosato Luna Knopp; (f) Audet & Partners, LLP; and (g) Baillon Thome Jozwiak
 2 Miller & Wanta as counsel for the Class ("Class Counsel"). For purposes of these settlement
 3 approval proceedings, the Court finds that these counsel are competent and capable of exercising
 4 their responsibilities as Class Counsel.

5 4. ***Settlement Hearing.*** A final approval hearing (the "Settlement Hearing") shall be
 6 held before this Court on December 19, 2012, at 3:00 p.m., as set forth in the Notice (described
 7 in Paragraph 5 below), to determine whether the Agreement is fair, reasonable and adequate and
 8 should be given final approval. Papers in support of final approval of the Agreement and for an
 9 award of attorneys' fees, costs, and expenses and for service awards to the Representative
 10 Plaintiffs (the "Fee and Expense Application") shall be filed with the Court according to the
 11 schedule set forth in Paragraphs 12-13, below. The Court may postpone, adjourn, or continue
 12 the Settlement Hearing by order of the Court, without further notice to the Class. After the
 13 Settlement Hearing, the Court may enter a Settlement Order and Final Judgment in accordance
 14 with the Agreement (the "Final Judgment"), which will adjudicate the rights of the Class
 15 Members with respect to the claims being settled.

16 5. ***Notice.*** The Court approves the form and content of the notices substantially in
 17 the forms attached as Exhibits B and C to the Agreement. Clearwire shall comply with the
 18 notice requirements of Paragraph 3.03 of the Agreement. In compliance with that Paragraph,
 19 within five (5) weeks of entry of this Order, Clearwire shall cause notice to be delivered to all
 20 Class Members who can be identified with reasonable effort. Notices sent by U.S. Mail or email
 21 shall be substantially in the form attached as Exhibit B to the Agreement, and a notice
 22 substantially in the form attached as Exhibit C to the Agreement shall be posted at a website, the
 23 Internet address for which shall be disclosed in the notices transmitted by U.S. Mail and email.

24 6. ***Filing of CAFA Notice.*** Before the Settlement Hearing, Clearwire shall file with
 25 the Court proof of its compliance with the notice provisions of the Class Action Fairness Act of
 26 2005 ("CAFA"), 28 U.S.C. § 1715.

1 7. ***Findings Concerning Notice.*** The Court finds that the Notice and the manner of
 2 its dissemination described in the previous Paragraph and in Paragraph 3.03 of the Agreement
 3 constitutes the best practicable notice under the circumstances and is reasonably calculated,
 4 under all the circumstances, to apprise Class Members of the pendency of this action, the terms
 5 of the Agreement and their right to object to or exclude themselves from the Class. The Court
 6 finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all
 7 persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of
 8 the Federal Rules of Civil Procedure, and any other applicable laws.

9 8. ***Exclusion from Class.*** Each Class Member who wishes to exclude himself or
 10 herself from the Class and follows the procedures set forth in this Paragraph shall be excluded.
 11 Any potential member of the Class may mail a written request for exclusion, in the form
 12 specified in the Notice, to the third-party administrator at the address set forth in the Notice. All
 13 such written requests must be postmarked by fourteen (14) weeks from entry of this Order. All
 14 persons who properly make requests for exclusion from the Class shall not be Class Members
 15 and shall have no rights with respect to, nor be bound by, the Agreement, should it be approved.
 16 The names of all such excluded individuals shall be attached as an exhibit to any Final Judgment.

17 9. ***Right to Abrogate Agreement.*** In the event more than a previously-agreed
 18 number of Class Members to whom Clearwire transmits notice timely exclude themselves from
 19 the Settlement Class, Clearwire shall have the unilateral right to abrogate the Agreement by
 20 written notice of abrogation to Class Counsel in accordance with subject to the procedures set
 21 forth in the Agreement. If Clearwire exercises its right to abrogate the Agreement, then all
 22 aspects of the Agreement and the settlement underlying it, including but not limited to the
 23 provisional certification of the Settlement Class for settlement purposes only, shall be altogether
 24 null and void, and no aspect of the Agreement, the settlement, or this Order shall serve as legal
 25 precedent or as any basis for legal or factual argument in this or any other case.

26 10. ***Claims Procedures.*** The Court approves the claims procedures set forth in the
 27 Agreement. The Court approves the form and content of the Claim Form substantially in the

1 form attached as the last page of Exhibit C to the Agreement. A properly executed Claim Form
 2 must be submitted as required in the Notice over the Internet or postmarked not later than
 3 twenty-one (21) days after the date of the Settlement Hearing. Such deadline may be further
 4 extended by Court Order. Each Claim Form shall be deemed to have been submitted when
 5 submitted over the Internet or postmarked (if properly addressed and mailed by first class mail,
 6 postage prepaid), provided such Claim Form is actually received prior to the Distribution Date.
 7 Any Claim Form submitted in any other manner shall be deemed to have been submitted when it
 8 was actually received at the address designated on the Claim Form.

9 11. ***Costs of Notice and Claims Processing.*** Clearwire shall bear all costs of
 10 providing notice to the Class of the pendency and settlement of the Actions and of processing
 11 claims.

12 12. ***Objections, Appearances, and Final Papers.***

13 (a) ***Written Objections.*** Any Class Member who has not timely submitted a
 14 written request for exclusion from the Class, and thus is a Class Member, may object to the
 15 fairness, reasonableness or adequacy of the Agreement, or the Fee and Expense Application.
 16 Any class member who wishes to object to the Settlement, must submit his or her objection in
 17 writing to Class Counsel, Attn: Clifford A. Cantor, Law Offices of Clifford A. Cantor, P.C., 627
 18 208th Ave. SE, Sammamish, WA 98074-7033 (Class Counsel), postmarked no later than
 19 fourteen (14) weeks from entry of this Order. Class Counsel will file copies with the Court via
 20 ECF. Objecting Class Members must include their name and address, the name and number of
 21 the case, and a statement of the reasons why they (i) believe the Court should find that the
 22 proposed settlement is not in the best interests of the Class, or (ii) object to the Fee and Expense
 23 Application. Any objection not timely made shall be forever barred.

24 (b) ***Appearance at Settlement Hearing.*** Any objecting Class Member who
 25 wishes to address the Court at the Settlement Hearing must indicate his or her intent to do so in
 26 writing to Class Counsel at the same time that the Class Member submits the objection. Class
 27 Counsel will inform the Court and Clearwire's lawyers accordingly. Any Class Member who

1 does not timely deliver a written objection and notice of intention to appear by fourteen (14)
2 weeks from entry of this Order, in accordance with the requirements of this Order, shall not be
3 permitted to object or appear at the Settlement Hearing, except for good cause shown, and shall
4 be bound by all proceedings, orders and judgments of the Court.

5 (c) ***Papers for Final Approval and for Fees and Expenses.*** Representative
6 Plaintiffs shall file their motion for final approval of the Settlement, and Class Counsel shall file
7 their motion for fees and expenses, together with all supporting documentation, by no later than
8 ten (10) weeks from entry of this Order, sufficiently in advance of the expiration of the objection
9 period that any Class Member will have sufficient information to decide whether to object and, if
10 applicable, to make an informed objection.

11 (d) ***Responses to Objections.*** Any responses to objections to the Agreement
12 or the Fee and Expense Application shall be filed with the Court on or before fifteen-and-a-half
13 (15 ½) weeks from entry of this Order.

14 13. ***Dates of Performance.*** In summary, the dates of performance are as follows:

15 (a) Clearwire shall send the Notice to potential Class Members on or before
16 September 28, 2012, i.e., within five (5) weeks after entry of this Order;

17 (b) Class Members who desire to be excluded shall mail requests for
18 exclusion postmarked by November 30, 2012, i.e., within fourteen (14) weeks after entry of this
19 Order;

20 (c) All objections to the Agreement or the Fee and Expense Application shall
21 be filed and served by November 30, 2012, i.e., within fourteen (14) weeks after entry of this
22 Order;

23 (d) Representative Plaintiffs' final approval motion, Class Counsel's fee and
24 expense motion, and all supporting materials, shall be filed no later than November 2, 2012, i.e.,
25 within ten (10) weeks after entry of this Order;
26
27

1 (e) Responses to objections, if any, and in further support of the Fee and
2 Expense Application, shall be filed by December 12, 2012, i.e., within fifteen-and-a-half (15 ½)
3 weeks after entry of this Order;

4 (f) The Settlement Hearing shall be held on December 19, 2012, at 3:00 p.m.,
5 approximately sixteen-and-a-half (16 ½) weeks after entry of this Order; and

6 (g) Class Members who desire to submit Claim Forms shall do so by January
7 9, 2012, i.e., twenty-one (21) days after the date of the Settlement Hearing.

8 14. ***Effect of Failure to Approve the Agreement.*** In the event the Court does not
9 approve the Agreement, or for any reason the parties fail to obtain a Final Judgment as
10 contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any
11 reason, then the following shall apply:

12 (a) All orders and findings entered in connection with the Agreement shall
13 become null and void and have no further force and effect, shall not be used or referred to for
14 any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

15 (b) The conditional certification of the Class pursuant to this Order shall be
16 vacated automatically, and the case shall return to its status as it existed prior to entry of this
17 Order;

18 (c) Nothing contained in this Order is, or may be construed as, any admission
19 or concession by or against Clearwire or Representative Plaintiffs on any point of fact or law,
20 including, but not limited to, factual or legal matters relating to any effort to certify this case as a
21 class action for purposes of considering settlement approval; and

22 (d) Nothing in this Order or pertaining to the Agreement shall be used as
23 evidence in any further proceeding in this case, including, but not limited to, motions or
24 proceedings pertaining to treatment of this case as a class action.

25 15. ***Discretion of Counsel.*** Counsel are hereby authorized to take all reasonable steps
26 in connection with approval and administration of the Settlement not materially inconsistent with
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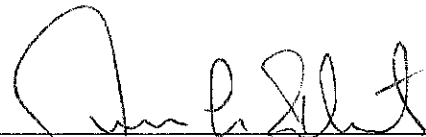
1 this Order or the Agreement, including, without further approval of the Court, making minor
2 changes to the content of the Notice that they jointly deem reasonable or necessary.

3 16. ***Stay of Proceedings Pending Approval of the Settlement.*** All proceedings before
4 the Court are stayed pending final approval of the settlement, except as may be necessary to
5 implement the settlement or comply with the terms of the Agreement.

6 17. ***Injunction against Asserting Released Claims Pending Settlement Approval.***
7 Pending final determination of whether the settlement should be approved, Plaintiffs, all Class
8 Members and any person or entity allegedly acting on behalf of Class Members, either directly,
9 representatively or in any other capacity, are preliminarily enjoined from commencing or
10 prosecuting against the Released Parties any action or proceeding in any court or tribunal
11 asserting any of the Released Claims, provided, however, that this injunction shall not apply to
12 individual claims of any Class Members who timely exclude themselves in a manner that
13 complies with this Order. This injunction is necessary to protect and effectuate the settlement,
14 this Order, and the Court's flexibility and authority to effectuate this settlement and to enter
15 judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its
16 judgments pursuant to 28 U.S.C. § 1651(a).

17 18. ***Reservation of Rights and Retention of Jurisdiction.*** The Court reserves the
18 right to adjourn or continue the date of the Settlement Hearing without further notice to Class
19 Members, and retains jurisdiction to consider all further applications arising out of or connected
20 with the settlement. The Court may approve or modify the settlement without further notice to
21 Class Members.

22 Dated this 24th day of August, 2012.

23
24 
25 THE HONORABLE JAMES L. ROBART
26 UNITED STATES DISTRICT JUDGE

27 Presented by:

LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

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CERTIFICATE OF SERVICE

I certify that, on this day, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

I further certify that, on this day, I deposited in the U.S. mail, postage prepaid, a copy of the foregoing addressed to plaintiff Robert Prior, 2016 E 6th Street, Vancouver WA 98661.

Dated: August 6, 2012.

s/ Cliff Cantor

Cliff Cantor, WSBA #17893

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